No. 2859

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHIN AH YOKE, alias JANE DOE,

Appellant,

vs.

EDWARD WHITE, Commissioner of Immigration for the Port of San Francisco,

IN THE MATTER OF CHIN AH YOKE, alias JANE DOE on Habeas Corpus,

Appellee.

BRIEF OF APPELLEE.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

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Attorneys for Appellee.

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BRIEF OF APPELLEE.

STATEMENT OF THE CASE

This appellant was charged under the warrant of arrest of the Acting Secretary of Labor, dated September 11, 1916, (Trans. pp. 34 and 35) as follows:

> "That she is a prostitute and has been found practicing prostitution subsequent to her entry into the United States."

After a hearing had been held in pursuance of the directions contained in said warrant of arrest,

and the record in the case sent to the Department by the Commissioner General of Immigration, the Secretary of Labor, in the warrant of deportation issued by him (Trans. pp. 25 and 26) found "that she is a prostitute and has been found practicing prostitution subsequent to her entry into the United States, and may be deported in accordance therewith."

The evidence that was before the Secretary, and which amply supported his finding contained in the warrant of deportation, is as follows:

The testimony of Wong Him Sing, with respect to the circumstances under which he was found with the appellant in the Mon Ming (Mun Wing) Hotel, San Francisco (Trans. pp. 35 to 47); the affidavit of Donaldina Cameron of the Woman's Occidental Board of Foreign Missions of the Presbyterian Church, as to the reputation for immorality of said Hotel (Trans. p. 68); the certificate of John A. Robinson, Immigration Inspector, to the same effect (Trans. p. 69), and a statement of J. X. Strand, Immigrant Inspector in Charge of the local Immigration Station, that the appellant's demeanor evidently indicated that she was of the prostitute class (Trans. p. 70).

The appellant maintains, first: That she is a native born citizen of the United States, and therefore without the scope of the Immigration law, and secondly: that the hearing accorded her by the Immigration officials was unfair.

The application for the warrant of arrest made by the local Commissioner of Immigration to the Secretary of Labor (Trans. pp. 32 and 33) shows that the said Commissioner believed that the appellant may be one Gum Chi alias Bow Heung, an alien for whose arrest a departmental warrant was issued on June 17, 1911. From the reports of Inspectors Robinson (Trans. p. 69) and Strand (Trans. pp. 70 and 71), it appears that these officers were later informed that the appellant was in fact one Wong Ah Mui, an alien Chinese woman who was landed in San Francisco in 1912 as the wife of one Lim Yuen; that upon securing from the files of the Immigration office the record of the said Wong Ah Mui, and comparing the photograph of Wong Ah Mui contained in that record with this appellant, Inspector Strand was satisfied that the said Wong Ah Mui and this appellant were one and the same person (Trans. pp. 52 to 54 and 70 and 71).

In his letter transmitting the record of the case to the Secretary of Labor for decision, the local Commissioner of Immigration expressed the same opinion. (Trans. pp. 27 and 28). In the record, as so transmitted, were enlarged photographs of the appellant and Wong Ah Mui, from a comparison of which the Secretary, as is shown in the warrant of deportation (Trans. pp. 25 and 26) came to the conclusion that the appellant and Wong Ah Mui were identical.

The evidence indicated in the foregoing clearly justifies the finding, not only that the appellant was a prostitute, but also that she was an alien and therefore the execution by the appellee of the order of the Secretary of Labor that she be deported cannot be set aside by this Court unless the hearing in the Immigration proceeding was unfair.

WAS THE IMMIGRATION HEARING UNFAIR?

Appellant urges that the hearing was unfair in four respects. The treatment of the first in appellant's brief (pp. 21 to 27) is purely technical. The application of the local Commissioner of Immigration to the Secretary of Labor for a warrant of arrest contains the following statements (Trans. p. 33).

> "Alien found in compromising surroundings with a man. Both detained. Man later released when landing was verified, as son of Native. Man stated to Inspector Robinson that woman was a prostitute. Alien as yet refuses to talk. It is believed that she may be Gum Chi, alias Bow Heung, warrant number 53210/76, dated June 17, 1911."

Upon these statements the warrant of arrest (Trans. pp. 34 and 35) was issued. Appellant contends that such issuance of the warrant was in violation of Immigration Rule 22, which provides the procedure for expulsion cases; (1) because the application made no showing of alienage; (2) and be-

cause no certificate of landing in the United States accompanied the application.

As to alienage, the Secretary acted upon the statement in the application that the appellant was believed by the local Commissioner to be one Gum Chi alias Bow Heung, a record concerning whom was in the Department of Labor at Washington, said record showing her to be an alien. It is submitted that this justified the conclusion of the Secretary of Labor that this appellant was an alien, for the purpose of her arrest, she to be given an opportunity afterwards to show that she was not an alien. That same record of Gum Chi alias Bow Heung, in the Department of Labor, must be presumed to have contained such data concerning her landing as could have been furnished by a certificate of the local Commissioner. It is submitted that the rule was substantially complied with when the warrant was issued. The fact that it was afterwards established to the satisfaction of the local Immigration officers and the Secretary that this appellant was not the alien Gum Chi alias Bow Heung, but was the alien Wong Ah Mui, does not make her any the less subject to deportation under the law as an alien prostitute, in the proceeding here in question.

This is not a case, as appellant would make it appear, like *Low Kwai* vs. *Backus,* 229 Fed. 481, decided by this Court and cited in appellant's brief, page 24; for here the Secretary did not, in issuing

the warrant of arrest, make its execution conditional upon an authority delegated to an inferior officer to decide whether evidence subsequently secured would be sufficient to justify the execution of a warrant.

The warrant in the present case was issued unconditionally after the Secretary had determined for himself from the evidence before him that this appellant was probably an alien prostitute, and therefore felt warranted in ordering her arrest.

Should the Court consider the case of *Moy Suey,* vs. *U. S.,* 147 Fed. 697, quoted on page 26 of the appellant's brief, applicable to the present case, attention is invited to the decision of the same Court—the Circuit Court of Appeals for the Seventh Circuit—in *Moy Guey Lum* vs. *U. S.* 211 Fed. 91, 94, which, although not in terms, in effect overrules the said *Moy Suey* vs *U. S.* case.

As to the second point treated in appellant's brief (pp. 28 to 37), to wit: that the refusal to put into the record of this case evidence which at first led the Immigration officials to believe this appellant was the alien Gum Chi alias Bow Heung, the Government maintains that inasmuch as this appellant denied that she was the said alien, Gum Chi alias Bow Heung, (Trans. pp. 48 and 49) always asserting on the contrary that she was a native-born citizen of the United States of an entirely different name; and inasmuch as the Immigration officials

finally became satisfied that she was not the said Gum Chi alias Bow Heung, such evidence was immaterial and therefore did not come within the scope of the decision of this Court in *re Cam Pon,* 168 Fed. 479, cited in appellant's brief (pp. 34 and 35).

Appellant's third point (appellant's brief pp. 37 to 45) is that the fact that the Immigration officials did not personally examine the appellant and a number of other persons who filed affidavits in the case to the effect that the appellant was a native-born citizen of the United States constituted unfairness.

A careful examination of the Immigration record, as contained in the transcript, fails to show that either at the time those affidavits were filed or at any time thereafter, any request was made that the affiants be so examined. Before the hearing was closed, as appears from a letter written by the local Acting Commissioner of Immigration to this appellant's attorney (Trans. p. 30), the attorney was advised that it was the desire of the Commissioner of Immigration to hear all witnesses in this appellant's behalf that the attorney might wish to introduce. How, now, can the appellant through her attorney, be heard to complain that the affiants in question were not examined when they were not produced for examination, or when it is not even shown that a request was made for their examination?

The appellant complains that in cases where persons of the Chinese race, applying for admission into the United States, claim American citizenship, the witnesses in their behalf are always personally examined by the Immigration officers and that the same procedure ought, to say the least, be followed in the case of a person of the Chinese race claiming American nativity who has been arrested while already in the United States. The answer to this is simple; the witnesses examined in behalf of applicants for admission are always produced by the applicant's relatives or friends in person before the Immigration officers. If, in the present case, the persons who made the affidavits had been produced before the said officers, their testimony would have been duly taken.

The fourth contention in the appellant's brief (Trans. pp. 45 to 56) is that she was greatly prejudiced by having been held incommunicado by the Immigration officers from September 1, 1915, the day on which she was taken into custody, until September 21, 1915, when she retained counsel and was enlarged on bail.

The first warrant of arrest (Trans. pp. 31 and 32) was issued in Washington, September 2, 1915, necessarily in pursuance to a telegraphic application therefor, for she was taken into custody on September 1; and the second warrant of arrest (Trans. pp. 34 and 35) was presumably issued upon receipt of the formal application (Trans. pp. 32 and 33). On September 20 the appellant was given an oppor-

tunity to inspect the warrant of arrest and all the evidence upon which it was issued; and further, to employ counsel and furnish bail (Trans. p. 55).

The specific claim made that prejudice resulted from the fact that the granting of the right of counsel was deferred until September 20, is that the opportunity was thereby lost to the appellant to cross-examine Wong Him Sing, the man with whom she was taken into custody.

The said Wong Him Sing was examined on September 1 (Trans. p. 35), the day that he and the appellant were taken into custody, and again on September 2 (Trans. p. 45), the day upon which the first warrant of arrest was issued in Washington, and presumably before the warrant could have been communicated to the local Immigration office, even by telegram. It is shown in the transcript of his testimony on September 1 (Trans. p. 35) that the fact of his American citizenship was then known to the Immigration officers. Those officers had no authority to hold him—an American citizen—until the arrival of the warrant; and they had no authority to permit counsel to appear in the case until the warrant was received. The Immigration officers were not responsible because Wong Him Sing, after his testimony was taken on September 2, returned to his home at Yuma, Arizona.

The local Commissioner, in his letter to the appellant's attorney (Trans. pp. 29 to 31), stated:

"With reference to the case of Jane Doe, alias Wong Ah Mui, alais Ah Yoke, arrested under Departmental warrant dated September 2 last, and which you represent as counsel, you are advised that the transmittal of this record to the Department has been unavoidably delayed until this date, when the record is being sent forward.

In connection therewith it is noted that you filed a brief of exceptions, wherein you protest against the admission of the testimony of Wong Him Sing on the ground that the detained was not confronted by said witness and was not accorded the privilege of cross-examination by counsel, as a result of which you request the recall of that witness. In reply thereto you are advised that it is the understanding of this office that said witness lives in Yuma, Arizona, and that he was only in this city on a visit at the time the defendant was taken into custody; and that this office has no authority or process by which his attendance as a witness could be compelled, or funds from which to defray the expenses incident thereto. It is unnecessary to state, however, that it is the desire of this office to hear all witnesses in the alien's behalf, and that if you wish to introduce this man as your witness, and have any means by which to accomplish that purpose, an opportunity will be accorded for the taking of such additional testimony. With regard to your further request that there be made part of the record statements of girls in a Presbyterian Mission who identified the defendant as Gum Chi or Bow Heung, and that there be produced for your inspection the warrant

of arrest for the last-mentioned person, you are advised that it does not appear from the record that those statements were recorded, and the first part of your request cannot therefore be complied with. You are informed, however, that these references in the record to Gum Chi and Bow Heung are entirely immaterial, and the introduction of the warrant of arrest in that case cannot therefore serve any useful purpose."

Appellant fails to show that she ever made an effort even to secure an affidavit from Wong Him Sing. The presence of counsel for appellant to cross-examine Wong Him Sing on September 1 or 2 was not authorized by Immigration Rule 22 and the Immigration officers, in the absence of the power of subpoena, were not obliged to secure his attendance for cross-examination thereafter.

Low Wah Suey vs. *Backus,* 225 U. S. 470.

It is submitted that the District Court was right in holding that the hearing given this appellant by the Department of Labor was not unfair, and should, therefore, be sustained.

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